IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION No. 2029 OF 2007

Ramesh Nandlal Jeswani Petitioner
Vs.
State of Maharashtra & Ors. Respondents

Mr. Subhash Jha, advocate i/b M/s. Law Global, for petitioner.

Mr. A.S. Gadkari, APP for respondent Nos. 1 & 2.

CORAM : R.M.S. KHANDEPARKAR
AND
Mrs. V.K. TAHILRAMANI, JJ.

DATE : NOVEMBER 1, 2007.

P.C. [Per : R.M.S. KHANDEPARKAR, J.]

. Heard. By the present petition, petitioner is seeking to quash the FIR No. 65/2007, lodged on 5th February 2007 with Chembur Police Station, in relation to the offence alleged to have been committed by the petitioner under S. 406, 420, 465,468, 471, 506 (ii) of I.P.C.

2. The contention raised on behalf of the petitioner is that the complainant had filed a complaint before the Metropolitan Magistrate, on account of failure on the part of police authorities to record the complaints, which were

initially lodged before such authority. After hearing the complainant, the learned Magistrate refused to order investigation under S. 156(3) Cr.P.C. by its order dated 13th October 2006. Being dissatisfied with the said order, the complainant had carried the matter in Revision Application, which came to be dismissed on 12-1-2007. While rejecting the request for direction for investigation under S. 156(3) Cr.P.C., the learned Magistrate had observed that recording the verification statement of the complainant is must in terms of provisions of law under the Code of Criminal Procedure. The same order was maintained in the Revision by the Revisional Court. It was after the rejection of the Revision Application, present complaint came to be filed and on the basis of which impugned FIR came to be registered on 5th February 2007.

3. On plain reading of the FIR, undoubtedly allegations are to the effect that the petitioner fabricated certain agreements in relation to 16 tenants and even signature of the complainant was forged on those contracts. Apparently, the allegations disclose the cognizable offence on the basis of which FIR came

to be registered. Contention raised on behalf of the petitioner is that since the learned Magistrate had rejected the request for investigation by police in exercise of power under S. 163 Cr.P.C. and the same was confirmed by the Revisional Court, the police authorities had no occasion to record the FIR or to initiate investigation.

4. Perusal of the order passed by the learned Magistrate while rejecting request for investigation under S. 156(3) Cr.P.C. discloses the following observation made by the learned Addl. Chief Metropolitan Magistrate, 11 Court, Esplanade Bombay-

> "There is reason to believe and say that when police did not take the cognizance on the complaint lodged by the complainant, it means that no cognizable offences were disclosed to the police when the complainant lodged the complaint."

5. The order passed by the Revisional Authority also disclose the categorical

observation that it was not of the view that it was a fit case for directing the police to investigate into the offence by registering FIR.

6. The observation made by the learned Magistrate while rejecting the request for reference under S. 156(3) Cr.P.C. apparently discloses the fact that the complaint as was filed before the police did not disclose the cognizable offence was taken note by the Magistrate. The Revisional Authority had in fact observed that the complaint which was lodged by the petitioner did not disclose cognizable offence. Obviously therefore, there was no case made out for registering FIR under S. 154 Cr.P.C. when the complaint was initially filed with the police. The Magistrate and the Revisional Authority therefore, had rightly rejected the request for reference of the matter for investigation under S. 156(3) Cr.P.C. as the complaint filed before the Magistrate also did not disclose any further material which could justify the direction under S. 156(3) Cr.P.C. However, the present complaint and the FIR apparently disclose the cognizable offence so as to enable the police authorities to take

cognizance thereof and to initiate investigation. It is settled law that once the cognizable offence is reported to the police, the police has duty to record the complaint and to investigate into the matter. If the police have performed their duty in terms of statutory provisions, it cannot be said that there is any illegality committed by them. Hence, it does not warrant interference in writ jurisdiction.

7. It is true that Magistrate as well as lower Revisional Court had refused to direct investigation under S. 156(3) Cr.P.C. However, the said rejection was essentially on the ground that cognizable offence was not disclosed at the relevant time. Once the complaint filed before the police discloses cognizable offence, it would not be appropriate for this court to interfere in exercise of writ jurisdiction and to quash the same. Therefore, the petition fails and is accordingly rejected.

Sd/-
[R.M.S. KHANDEPARKAR, J.]

Sd/-
[Smt. V. K. TAHILRAMANI,J.]